

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, Secretary
of Health and Human Services, *et al.*,

Defendants.

No. 7:16-cv-00108

STATUS REPORT

Pursuant to this Court’s August 16, 2017 Order, ECF No. 108, Defendants hereby provide the following update on “rulemaking proceedings initiated with respect to the challenged Rule.” ECF No. 108. *See also* 45 C.F.R. § 92 (the “Rule”).¹ As previously described, Defendants are reevaluating the reasonableness, necessity, and efficacy of the Rule that is challenged in this case and, as part of that process, are assessing the issues identified by the Court in granting Plaintiffs a preliminary injunction.

A draft of a proposed rule is going through the clearance process within the Executive Branch. Specifically, Defendants have engaged with the Department of Justice (“DOJ”) on a draft of a proposed rule pursuant to Executive Order 12,250 (“Leadership and Coordination of Nondiscrimination Laws”). Since the filing of the last status report, the Executive Order 12,250 process has been completed.

¹ Pursuant to Fed. R. Civ.P. 25(d), Alex M. Azar II is substituted as a defendant in his official capacity as Secretary of Health and Human Services.

The draft rule must go through an inter-agency clearance process managed by the Office of Management and Budget (“OMB”) under Executive Order 12,866. Defendants anticipate that after the clearance process is complete, the future rulemaking proceedings will involve notice and comment. The time required to complete both the clearance process and notice and comment rulemaking proceedings will depend largely on inter-agency coordination and on the public comments on the proposed rule.

Defendants request an opportunity to continue reconsidering the Rule and do not request that the Court close this case. Meanwhile, Defendants will continue to abide by this Court’s preliminary injunction and will therefore not enforce the Rule’s prohibition against discrimination on the basis of gender identity or termination of pregnancy.

Defendants therefore request that the Court maintain the stay in this case.

DATED: February 13, 2018

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/s/ Emily B. Nestler
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2018, a copy of the foregoing Status Report was filed electronically via the Court's ECF System, which effects service upon counsel of record.

/s/ *Emily Nestler*
Emily B. Nestler